

“Exhibit B”

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FRANKLIN COUNTY PA
2020 FEB 26 AM 9:11
TIMOTHY S. SPONSELLER
PROTHONOTARY
DEPUTY J.M.

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, PENNSYLVANIA

Civil Division

CINDY M. ORNER, Individually and as
ADMINISTRATRIX of the ESTATE OF
RAYMOND J. ORNER, JR., Deceased,

Plaintiff,

vs.

INTERNATIONAL LABORATORIES,
LLC; WAL-MART STORES EAST, L.P.;
and WAL-MART SUPERCENTER #3633,

Defendants.

Judge Mary Beth Shank

No.: 2019-4862

PLAINTIFF'S COMPLAINT

Code:

Filed on Behalf of: Plaintiff, Cindy M. Orner,
Individually and as Administratrix of the Estate
of Raymond J. Orner, Jr., Deceased

Counsel of Record for this Party:

SCOTT M. SIMON, ESQUIRE
Pa I.D. No.: 307559

ROBERT PEIRCE & ASSOCIATES, P.C.
Firm I.D. No.: 839

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INTERNATIONAL LABORATORIES, LLC;
WAL-MART STORES EAST, L.P.; and
WAL-MART SUPERCENTER #3633,

Defendants.

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice were served, by entering a written appearance personally or by an attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the Complaint or for any claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

Pennsylvania Bar Association
Lawyer Referral Service
Telephone: 1-800-692-7375 (PA ONLY)
or 717-238-6715

**YOU MUST RESPOND TO THIS COMPLAINT WITHIN TWENTY (20) DAYS
OR A JUDGMENT FOR THE AMOUNT CLAIMED MAY BE ENTERED AGAINST
YOU BEFORE THE HEARING. IF YOU DO NOT APPEAR FOR THE HEARING, THE
CASE MAY BE HEARD IMMEDIATELY BEFORE A JUDGE. THERE IS NO RIGHT
TO A TRIAL DE NOVO ON APPEAL FROM A DECISION ENTERED BY A JUDGE.**

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, PENNSYLVANIA

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CINDY M. ORNER, Individually and as
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No.: 2019-4862

Plaintiff,

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INTERNATIONAL LABORATORIES, LLC;
WAL-MART STORES EAST, L.P.; and
WAL-MART SUPERCENTER #3633,

Defendants.

PLAINTIFF'S COMPLAINT

AND NOW, comes the Plaintiff, Cindy M. Orner, Individually and as Administratrix of the Estate of Raymond J. Orner, Jr., Deceased, by and through her undersigned counsel, Scott M. Simon, Esquire, and the law firm of Robert Peirce & Associates, P.C., and claims damages of the Defendants, International Laboratories, LLC; Wal-Mart Stores East, L.P.; and Wal-Mart Supercenter #3633; upon causes of action, the following of which are statements:

1. Plaintiff Cindy M. Orner is an adult individual who resides at 280 Hawbaker Avenue, Waynesboro, Franklin County, Pennsylvania 17268.
2. Cindy M. Orner is the widow of Decedent Raymond J. Orner, Jr.
3. Cindy M. Orner was appointed Administratrix of the Estate of Raymond J. Orner, Jr. by the Register of Wills of Franklin County on December 2, 2019.
4. Plaintiff brings this action pursuant to 42 Pa. Const. Stat. § 8301 and Pa. R.C.P. 2202(a) as the personal representative of the Estate of Raymond J. Orner, Jr., on her own behalf

and on behalf of all those entitled by law to recover damages for the wrongful death of Raymond J. Orner, Jr.

5. The names of all persons legally entitled to recover damages for the wrongful death of Raymond J. Orner, Jr., and their relations to him, are as follows:

<u>Name:</u>	<u>Relationship:</u>
Cindy M. Orner	Spouse
Jessica Orner	Daughter

6. Defendant International Laboratories, LLC is a Florida Limited Liability Corporation engaged in business in Pennsylvania with a registered address located at 6911 Bryan Dairy Road, Suite 270, Seminole, Florida 33777.

7. Defendant Wal-Mart Stores East, L.P., is a Delaware Limited Partnership engaged in business in Pennsylvania with a registered address located at 601 N. Walton Boulevard, Bentonville, Arkansas 72712.

8. Defendant Wal-Mart Supercenter #3633 is a stand-alone Wal-Mart location that, upon information and belief, was owned and operated by Defendant Wal-Mart Stores East, L.P. at all times relevant hereto. Defendant Wal-Mart Supercenter #3633 operates at a registered address of 12751 Washington Township Boulevard, Waynesboro, Franklin County, Pennsylvania 17268.

9. Defendant Wal-Mart Stores East, L.P. and Defendant Wal-Mart Supercenter #3633 will hereinafter be referred to collectively as "Wal-Mart Defendants".

10. At all times relevant hereto, the above-named Defendants acted independently, and by and through their duly authorized agents, servants, and employees, then and there acting within the course and scope of their employment.

11. At no time during his life did Raymond J. Orner, Jr. bring an action to recover damages for his personal injuries, and no other action has been brought to recover damages for the wrongful death of Raymond J. Orner, Jr.

FACTS COMMON TO ALL CAUSES OF ACTION

12. All preceding paragraphs of this Complaint are incorporated herein, as if set forth more fully at length.

13. On or about November 9, 2017, Mr. Orner underwent an angioplasty to his left leg, with implantation of a stent.

14. Mr. Orner had prior stents placed in his right coronary artery, left internal carotid artery, and his right internal iliac artery, all within the previous four years.

15. Mr. Orner had been taking Clopidogrel (also known as "Plavix") daily since April of 2017.

16. Clopidogrel is a platelet inhibiting medication that is prescribed to patients with various cardiovascular diseases, peripheral arterial disease, and patients with a history of strokes.

17. Specifically, Mr. Orner was prescribed Clopidogrel by his physician as a prophylactic measure for the prevention of blood clots, heart attacks, and strokes.

18. Missed doses of Clopidogrel increase a person's risk of heart attack and stroke, which can be life-threatening.

19. On November 16, 2017, Mr. Orner went to the pharmacy at Wal-Mart Supercenter #3633 to pick up his Clopidogrel prescription.

20. At some point before November 16, 2017, Defendant International Laboratories, LLC shipped a manufacturer's lot of what had been marked Clopidogrel 75 mg bottles to Wal-Mart Supercenter #3633.

21. Each bottle had been packaged with thirty tablets.

22. However, although each of the bottles had been individually marked as Clopidogrel, many of the bottles in the shipment actually contained thirty 10 mg tablets of Simvastatin.

23. Upon information and belief, as a result of International Laboratories, LLC's packaging error, instead of distributing thirty 75 mg tablets of Clopidogrel per Mr. Orner's prescription, the pharmacy at Wal-Mart Supercenter #3633 actually distributed to Mr. Orner a bottle containing thirty 10 mg tablets of Simvastatin.

24. For a period of several weeks thereafter it is believed that Mr. Orner took the incorrect medication, believing the bottle he had been given at Wal-Mart had been packaged with Clopidogrel.

25. Because Mr. Orner was not actually taking Clopidogrel as prescribed by his doctor, his risk of suffering a heart attack and stroke increased with each passing day.

26. On December 12, 2017, Mr. Orner suffered a heart attack and died.

27. At the time of his death, Mr. Orner was 55-years-old.

28. For a period of time following his death, Mr. Orner's family was under the impression that he had died of natural causes.

29. However, on January 10, 2018, Defendant International Laboratories, LLC sent a letter to Mr. Orner's next-of-kin detailing the labelling error and resulting recall of the entire lot of Clopidogrel 75 mg bottles that it had shipped to Wal-Mart Supercenter #3633.

COUNT I

**CINDY M. ORNER, Individually and as ADMINISTRATRIX of the ESTATE OF
RAYMOND J. ORNER, JR., Deceased vs. INTERNATIONAL LABORATORIES, LLC**

STRICT PRODUCTS LIABILITY

30. All preceding paragraphs of this Complaint are incorporated herein, as if set forth more fully at length.

31. Defendant International Laboratories, LLC was, at all times relevant hereto, engaged in the business of selling and distributing bottles containing 75 mg tablets of Clopidogrel.

32. Defendant International Laboratories, LLC was the manufacturer and distributor of multiple Clopidogrel bottles which contained Simvastatin, one of which was sold to Raymond J. Orner, Jr. in the course of their business.

33. The bottles distributed to the Wal-Mart Defendants and, thereafter, Raymond J. Orner, Jr., and which contained Simvastatin and not Clopidogrel were manufactured and distributed or otherwise placed into the stream of commerce by Defendant International Laboratories, LLC, and was expected to and did reach Raymond J. Orner, without any alterations or changes in its condition.

34. Raymond J. Orner, Jr., the ultimate consumer, did not contemplate that the Clopidogrel bottles manufactured by Defendant International Laboratories, LLC contained the incorrect medication.

35. Because Clopidogrel is intended for use as a prophylactic anticoagulation medication for the purpose of preventing heart attack and strokes, and because Raymond J. Orner, Jr. intended to use the medication for that purpose, the bottle marked as Clopidogrel 75 mg tablets which contained Simvastatin as sold to Mr. Orner was unreasonably dangerous and in fact fatal to him in that it gave Mr. Orner the false assumption that he was taking the correct medication for his condition when, in fact, he was not.

36. No warning was ever given to Plaintiff or Decedent Raymond J. Orner, Jr. by Defendant International Laboratories, LLC of the defect until January 10, 2018 – nearly one month after Mr. Orner died from a fatal heart attack.

37. The defective and unreasonably dangerous manufacturing of the Clopidogrel bottles distributed to Wal-Mart Supercenter #3633 which contained Simvastatin was a direct and proximate cause of Raymond J. Orner's injuries, heart attack, and death.

38. As a result, Defendant International Laboratories, LLC is strictly liable to Plaintiff for damages claimed in this case.

WHEREFORE, Plaintiff, Cindy M. Orner, Individually and as Administratrix of the Estate of Raymond J. Orner, Jr., Deceased, claims damages of the Defendant, International Laboratories, LLC, and demands compensatory damages from the Defendant in an amount in excess of the jurisdictional arbitration limits, together with interest, costs of suit, and any other relief this Honorable Court deems appropriate to recover for which this suit is filed.

COUNT II

**CINDY M. ORNER, Individually and as ADMINISTRATRIX of the ESTATE OF
RAYMOND J. ORNER, JR., Deceased vs. INTERNATIONAL LABORATORIES, LLC**

NEGLIGENCE – SURVIVAL

39. All preceding paragraphs of this Complaint are incorporated herein, as if set forth more fully at length.

40. At some point prior to November 16, 2017, Defendant International Laboratories, LLC prepared and shipped a manufacturer's lot of what had been marked Clopidogrel 75 mg bottles to Wal-Mart Supercenter #3633, but instead had filled bottles with Simvastatin.

41. At the time of preparation of the lot, Defendant International Laboratories, LLC had a duty to the Decedent, Raymond J. Orner, and other individuals who required Clopidogrel for anticoagulation, to use the professional skill, training, and expertise of a reasonably prudent pharmaceutical company in the preparation of said lot of medications.

42. Upon shipment of the defective lot to Wal-Mart Supercenter #3633, Defendant International Laboratories, LLC breached its duty of care by negligently and erroneously mislabeling medications that had been prescribed for Raymond J. Orner, Jr., thereby depriving him of necessary medication.

43. Additionally, Defendant International Laboratories, LLC breached its duty of care by filling bottles labeled as containing Clopidogrel 75 mg tablets with Simvastatin.

44. After receipt of the mislabeled medications, and in reliance upon the skill, training, and expertise of Defendant International Laboratories, LLC, Raymond J. Orner, Jr. ingested Simvastatin, the incorrect medication, believing that he was ingesting Clopidogrel.

45. As a direct and proximate result of the negligence of the Defendant, International Laboratories, LLC, as hereinabove set forth, Raymond J. Orner, Jr. ingested the incorrect medication for several weeks, was deprived of necessary anticoagulation medication, suffered a heart attack, and died as a result.

WHEREFORE, Plaintiff, Cindy M. Orner, Individually and as Administratrix of the Estate of Raymond J. Orner, Jr., Deceased, claims damages of the Defendant, International Laboratories, LLC, and demands compensatory damages from the Defendant in an amount in excess of the jurisdictional arbitration limits, together with interest, costs of suit, and any other relief this Honorable Court deems appropriate to recover for which this suit is filed.

COUNT III

**CINDY M. ORNER, Individually and as ADMINISTRATRIX of the ESTATE OF
RAYMOND J. ORNER, JR., Deceased vs. INTERNATIONAL LABORATORIES, LLC**

WRONGFUL DEATH

46. All preceding paragraphs of this Complaint are incorporated herein, as if set forth more fully at length.

47. All of the actions and/or inactions of Defendant International Laboratories, LLC, as described above, as well as the breaches of the duty of care owed to Raymond J. Orner, Jr. increased the risk of harm to him and caused and/or contributed to his death on December 12, 2017.

48. The persons entitled by law to recover damage for Raymond J. Orner's wrongful death, identified herein, have sustained the following damages and losses:

- a. All money expended for surgical, hospital, and nursing expenses incurred prior to the death of Raymond J. Orner, Jr.;

- b. All money expended for funeral and estate expenses because of the death of Raymond J. Orner, Jr.; and,
- c. They have forever been denied and forever lost the services, society and comfort, as well as the assistance, guidance, counseling, companionship, solace and protection of the Decedent, Raymond J. Orner, Jr..

WHEREFORE, Plaintiff, Cindy M. Orner, Individually and as Administratrix of the Estate of Raymond J. Orner, Jr., Deceased, claims damages of the Defendant, International Laboratories, LLC, and demands compensatory damages from the Defendant in an amount in excess of the jurisdictional arbitration limits, together with interest, costs of suit, and any other relief this Honorable Court deems appropriate to recover for which this suit is filed.

COUNT IV

**CINDY M. ORNER, Individually and as ADMINISTRATRIX of the ESTATE OF
RAYMOND J. ORNER, JR., Deceased vs. WAL-MART DEFENDANTS**

NEGLIGENCE - SURVIVAL

49. All preceding paragraphs of this Complaint are incorporated herein, as if set forth more fully at length.

50. On or around November 16, 2017, the pharmacy located at Wal-Mart Supercenter #3633 received a defective shipment of bottles marked as containing Clopidogrel 75 mg tablets when the bottles actually contained Simvastatin.

51. The Wal-Mart Defendants were responsible for the operation of the pharmacy located at Wal-Mart Supercenter #3633, where Raymond J. Orner, Jr. was negligently and inappropriately sold Simvastatin instead of Clopidogrel.

52. The Wal-Mart Defendants had a duty to establish and execute policies, procedures, and guidelines relevant to the operation of the pharmacy located at Wal-Mart Supercenter #3633, tailored for the purpose of preventing customers from receiving incorrect medications.

53. The Wal-Mart Defendants had a duty to hire, train, supervise, and retain qualified employees, pursuant to its operation of the pharmacy located at Wal-Mart Supercenter #3633 who would not place customers in danger by providing them with incorrect medications.

54. The Wal-Mart Defendants breached their duties by failing to establish and execute reasonable policies and procedures sufficient to prevent its customers from receiving incorrect medications, thereby causing Raymond J. Orner, Jr. to receive and ingest an incorrect and inappropriate medication.

55. The Wal-Mart Defendants breached its duties by failing to hire, train, supervise, and retain qualified employees capable of ensuring that customers did not receive incorrect and inappropriate medications, thereby causing Raymond J. Orner, Jr. to receive and ingest an incorrect and inappropriate medication.

56. As a direct result of the negligence of the Wal-Mart Defendants, Raymond J. Orner was given the wrong medication, which he then ingested under the assumption and belief that he was taking the proper medication which he had been prescribed.

57. As a direct result of the negligence of the Wal-Mart Defendants, Raymond J. Orner never received the proper medication which he had been prescribed, which proximately caused his heart attack and death on December 12, 2017.

WHEREFORE, Plaintiff, Cindy M. Orner, Individually and as Administratrix of the Estate of Raymond J. Orner, Jr., claims damages of the Defendants Wal-Mart Stores East, L.P., and Wal-Mart Supercenter #3633, and demands compensatory damages from the Wal-Mart Defendants in an amount in excess of the jurisdictional arbitration limits, together with interest, costs of suit, and any other relief this Honorable Court deems appropriate to recover for which this suit is filed.

COUNT V

**CINDY M. ORNER, Individually and as ADMINISTRATRIX of the ESTATE OF
RAYMOND J. ORNER, JR., Deceased vs. WAL-MART DEFENDANTS**

WRONGFUL DEATH

58. All preceding paragraphs of this Complaint are incorporated herein, as if set forth more fully at length.

59. All of the actions and/or inactions of the Wal-Mart Defendants, as described above, as well as their breaches of the duty of care owed to Raymond J. Orner, Jr., increased the risk of harm to him and caused and/or contributed to his death on December 12, 2017.

60. The persons entitled by law to recover damage for Raymond J. Orner's wrongful death, identified herein, have sustained the following damages and losses:

- a. All money expended for surgical, hospital, and nursing expenses incurred prior to the death of Raymond J. Orner, Jr.;
- b. All money expended for funeral and estate expenses because of the death of Raymond J. Orner, Jr.; and,
- c. They have forever been denied and forever lost the services, society and comfort, as well as the assistance, guidance, counseling, companionship, solace and protection of the Decedent, Raymond J. Orner, Jr.

WHEREFORE, Plaintiff, Cindy M. Orner, Individually and as Administratrix of the Estate of Raymond J. Orner, Jr., claims damages of the Defendants Wal-Mart Stores East, L.P., and Wal-Mart Supercenter #3633, and demands compensatory damages from the Wal-Mart Defendants in an amount in excess of the jurisdictional arbitration limits, together with interest, costs of suit, and any other relief this Honorable Court deems appropriate to recover for which this suit is filed.

A JURY TRIAL IS DEMANDED.

Respectfully submitted,

ROBERT PEIRCE & ASSOCIATES, P.C.

By: 

SCOTT M. SIMON, ESQUIRE
Counsel for Plaintiff

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Civil Division

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No.: 2019-4862

Plaintiff,

vs.

INTERNATIONAL LABORATORIES, LLC;
WAL-MART STORES EAST, L.P.; and
WAL-MART SUPERCENTER #3633,

Defendants.

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

ROBERT PEIRCE & ASSOCIATES, P.C.

By: 

SCOTT M. SIMON, ESQUIRE

PA ID No.: 307559

Counsel for Plaintiff

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WAL-MART SUPERCENTER #3633,

Defendants.

VERIFICATION

I verify that the averments of fact made in the foregoing Plaintiff's Complaint are true and correct and based on my personal knowledge, information or belief. I understand that averments of fact in said document are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsifications to authorities.

1-31-20
Dated


CINDY M. ORNER

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, PENNSYLVANIA

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WAL-MART SUPERCENTER #3633,

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Complaint was served by first class United States mail, postage pre-paid, upon counsel for the Defendants, addressed as follows, this 25th day of February 2020.

Elisa M. Boody, Esquire
McDonnell & Associates, P.C.
Metropolitan Business Center
860 1st Avenue, Suite 5B
King of Prussia, PA 19406
(Attorney for Wal-Mart Defendants)

Maureen E. Daley, Esquire
William C. Stubits, Esquire
Rawle & Henderson, LLP
The Widener Building
1339 Chestnut Street, 17th Floor
Philadelphia, PA 19107
(Attorney for International Laboratories, LLC)

Respectfully submitted,

ROBERT PEIRCE & ASSOCIATES, P.C.

By: 

SCOTT M. SIMON, ESQUIRE
Counsel for Plaintiff